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CF 1005

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition. No. 2496 /2003

PETITIONER: **1** Hiralal S/o Shri Bansraj age about 52 yrs, Occu-Loader/Dresser, B.Seam Colliery Hasdeo Area-Dist Korea (C.G.)

VERSUS:

RESPONDENTS:

1. Personal Manager (IR) South Eastern Coal field Limited H.O. Bilaspur C.G.
2. Deputy Chief Personal Manager Hasdeo Area. Dist-Korea
3. Personal Officer South JKD. Colliery, Hasdeo Area. Dist-Korea

P. R. No. 2196/03
Presented by Shri Keshav Sahu
dated 31.12.03

Writ Petition Article 226/227 of the Constitution of India for issuance of writ of Certiorari/Mandamus

XI-HC-22

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

24.9.2004

Smt. Hamida Siddique, counse for the petitioner.

Shri H.B. Agrawal with Shri Pankaj Agrawal counsel for the respondents.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, seeking reliefs that (i) the respondents be directed to correct the date of birth of the petitioner as 10.8.1952 instead of 1.7.1942; (ii) the respondents be directed to allow the petitioner to work for further seven years from the year 2003 when he will attain the age of six years; and (iii) the respondents be directed to pay the wages of four months i.e. from 30.6.2002 to 29.10.2002.

The petitioner's case is that he was appointed as Loader/Dresser in the respondent Department on 20.1.1973. The date of birth of the petitioner is 10.8.1952, but at the time of joining service the appointing authority wrongly entered his date of birth as 1.7.1942. The petitioner is an educated person and received education up to Class-V. All of a sudden, the petitioner received notice of retirement (Annexure P-2). Then, he approached the respondents through the General Secretary, INTUC, Hasdeo Area, and represented his case, then he was asked to appear before Medical Board. According to the school-leaving certificate (Annexure P-3), the petitioner's correct date of birth is 10.8.1952. The petitioner is a labour having eight children and wife. If he is ousted from service, then his whole family will be on the road. After medical examination, the

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respondents compelled the petitioner to enter into an agreement, which shows arbitrariness of the respondents. According to the agreement dated 26.10.2002, the petitioner's age was determines as 58 years as on 28.9.2002 and he was taken back on service from 26.10.2002 for a further period of two years.

Return has been filed on behalf of the respondents in which it has been mentioned that the agreement Annexure P-1 bears the signature of the petitioner and also the signature of his Union representative, which was done under Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957, in Form H. Therefore, it has the legal sanction under the Industrial Disputes Act, 1947, because such settlements are binding under Section 18 of the Industrial Disputes Act, 1947. If any grievance has to be made then it shall be the subject matter to be tried by the Central Government Industrial Tribunal cum Labour Court, Jabalpur, but not in writ petition. The petitioner agreed the date of birth according to the assessment of the Apex Medical Board of the South Eastern Coalfields Limited, Bilaspur, and on terms of settlement only he was allowed to be taken on duty w.e.f. 29.10.2002, now he cannot go beyond that agreement. It has been further mentioned that at the time of appointment of the petitioner on 20.1.1973, Form B was filled which is Annexure R-1 in which his date of birth was recorded. It is denied that all of a sudden, the petitioner received superannuation notice dated 9.1.2002. In fact in the year 1987, the petitioner was informed about the service particulars in which his date of

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birth was written as 1.7.1942, which is Annexure R-2. Therefore, in view of Annexures R-1 & R-2 the petitioner has not mentioned his education qualification, moreover, he put his thumb impression on all these papers viz., service register as well as medical certificate. Apex Medical Board's report dated 30.9.2002 is Annexure R-5. Ultimately, it has been prayed to dismiss the writ petition.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that as per the school-leaving certificate, the correct date of birth of the petitioner is 10.8.1952. She submitted that in view of the Joint Bipartite Committee circular dated 25.4.1988 (Annexure P-5), Implementation Instruction No.76 Procedure for Determination/Verification of Age of Employees, sub-clause (II) of Part A envisages that

> *"In the case of appointees who have pursued studies in a recognized educational Institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances."*

Therefore, learned counsel for the petitioner urged that in view of the above instructions, the respondent ought to have considered the case of the petitioner and corrected the date of birth accordingly.

Having heard the learned counsel for the petitioner, I have perused the record. Perusal of the record reveals that at the time entering into the service, the petitioner had filled Form B Annexure R-1 and other particulars

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were entered. Even the date of birth of the petitioner was entered as 1.7.1942, which bears the thumb impression of the petitioner. Nowhere it has been mentioned that he is educated up to Class-V. Even thereafter, in the year 1987, the petitioner was intimated vide Annexure R-2 about his service particulars in which also he mentioned his date of birth as 1.7.1942, and he also mentioned the names of his family members etc.. Therefore, till he received the notice of retirement Annexure P-2, the petitioner remain silent and he never raised dispute regarding the recording of incorrect date of birth by the respondents. Even when the instructions of 1988 were issued, the petitioner was well within his right to represent to the respondents for correction of date of birth along with his school-leaving certificate. After receiving the notice for retirement, the petitioner represented his case and accordingly, his case was referred before the Medical Board for determination of his age. As per the medical report dated 30.9.2002, his age was determined as 58 years and that was accepted by him under the agreement signed by him, now, he cannot challenge the same.

As far as the question of school leaving certificate is concerned, in the first instance, the date of birth recorded in the school-leaving certificate is not a conclusive proof of age. In the second instance, before filing this writ petition and before receiving the retirement notice, the petitioner had never apprised the respondents about his date of birth and school leaving certificate, and claimed the protection of instructions, which

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the learned counsel for the petitioner just now referred. Even the school-leaving certificate Annexure P-3 reveals that the petitioner obtained the certificate on 15.2.1993 and he remained silent till 2002 when he received the notice of retirement. Moreover, the petitioner was medically examined by a Board and the Board after examining him reached to the conclusion that the petitioner was 58 years old as on the date of medical examination. As per the school-leaving certificate, his age was 50 years. In the medical examination, no such inaccuracy can be thought of.

Therefore, I am of the opinion that the petitioner has no case for issuing any writ and direction by this Court. The petition is liable to be dismissed and therefore, it is dismissed.

Consequently, M.(W.)P.No.2909/2004 and I.A.No.6980/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma/Sunita

[पीछे देखिये